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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12 PAUL WOZNIAK,  
13 Plaintiff,  
14 v.  
15 CENTRAL PURCHASING, LLC;  
16 HARBOR FREIGHT TOOLS USA, INC.;  
and DOES 1-150, inclusive,  
17 Defendants.  
18

Case No. RG15767955  
**[PROPOSED] CONSENT JUDGMENT**  
(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”)  
4 and defendants Harbor Freight Tools USA, Inc. and Central Purchasing, LLC (“Defendants”), with  
5 Wozniak and Defendants each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Paul Wozniak**

7 Wozniak is a resident of the State of California who seeks to promote awareness of  
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful  
9 substances contained in consumer and commercial products.

10 **1.3 Defendants**

11 Defendants employ ten or more persons and are a person in the course of doing business for  
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that Defendants manufacture, import, sell and/or distribute for sale in  
16 California certain products containing di(2-ethylhexyl)phthalate (“DEHP”), and that Defendants do  
17 so without providing the health hazard warning that Wozniak alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are the following products manufactured,  
20 distributed and/or sold by Defendants: (i) *Garage/Counter Swivel Stool with Flame Design,*  
21 *SKU#91200 UPC #7 92363 91200 6;* (ii) *Personal Sound Amplifier, Item 66863, UPC #7 92363*  
22 *66863 7;* (iii) *7 Piece Tweezer Set, #96124, UPC #7 92363 96124 0;* (iv) *15 ft. Pet Tie, Item 96484,*  
23 *UPC #7 92363 96484 5;* and (v) *Attache Case, #35233, UPC #7 92363 35233 8,* (collectively,  
24 “Products”).

25 **1.6 Notices of Violation**

26 On March 26, 2014, September 12, 2014, and on November 25, 2014, Wozniak served  
27 Defendants and the requisite public enforcement agencies, with a 60-Day Notice of Violation, a  
28 Supplemental 60-Day Notice of Violation and a Second Supplemental 60-Day Notice of Violation

1 respectively (collectively referred to herein as the “Notices”), alleging that Defendants violated  
2 Proposition 65 when they failed to warn their customers and consumers in California that the  
3 Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has  
4 commenced and is diligently prosecuting an action to enforce the allegations set forth in the  
5 Notices.

6 **1.7 Complaint**

7 On April 27, 2015, Wozniak commenced the instant action against Defendants, alleging  
8 violations of Proposition 65 that are the subject of the Notices.

9 **1.8 No Admission**

10 Defendants deny the allegations contained in the Notices and Complaint, and maintain that  
11 any products they have sold or distributed for sale in California, including the Products, have been,  
12 and are, in compliance with all applicable laws. Nothing in this Consent Judgment shall be  
13 construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or  
14 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
15 admission by Defendants of any fact, finding, conclusion of law, issue of law, or violation of law.  
16 This Section shall not, however, diminish or otherwise affect Defendants’ obligations,  
17 responsibilities, and duties under this Consent Judgment.

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
20 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in  
21 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of  
22 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
25 Judgment is entered in this action.  
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1 **2. INJUNCTIVE SETTLEMENT TERMS**

2 **2.1 Reformulation Standards**

3 “Reformulated Products” are defined as those Products containing DEHP in concentrations  
4 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental  
5 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by  
6 federal or state government agencies for the purpose of determining DEHP content in a solid  
7 substance.

8 **2.2 Reformulation/Warning Commitment**

9 Within thirty (30) days of the Effective Date, all Products manufactured, imported,  
10 distributed, sold and/or offered for sale in the State of California by Defendants shall be Products  
11 that qualify as Reformulated Products as defined in Section 2.1, or shall carry the appropriate health  
12 hazard warnings per section 2.3, below.

13 **2.3 Product Warnings**

14 Defendants shall provide the clear and reasonable warnings provided in subsections 2.3(a)  
15 and (b) for all Non-Reformulated Products. Each warning shall be placed so it is likely to be read  
16 and understood by an ordinary individual under customary conditions before purchase or use.

17 **(a) Retail Store Sales.**

18 **(i) Product Labeling.** Defendants shall affix a warning to the  
19 packaging, labeling, or directly on each Product provided for sale in retail outlets in California that  
20 states:

21 **WARNING:** This product contains di(2-ethylhexyl) phthalate (DEHP),  
22 A chemical known to the State of California to cause  
23 cancer and birth defects or other reproductive harm.  
(California Health & Safety Code § 25249.5, et seq.)

24 Or,

25 **WARNING:** This product contains di(2-ethylhexyl) phthalate (DEHP),  
26 a chemical known to the State of California to cause  
27 cancer and birth defects and other reproductive harm.  
(California Health & Safety Code § 25249.5, et seq.)

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1                   **(b) Internet Sales.** In the event that Defendants sell Products via the internet, to  
2 customers located in California, after the Effective Date, that are not Reformulated Products,  
3 Defendants shall provide warnings for such Products sold via the internet to California residents.  
4 Warnings given on the internet shall identify to which specific product the warning applies, as  
5 further specified in Sections 2.3(b)(i) and (ii).

6                   **(i) Internet Website Warning.** A warning shall be given in conjunction  
7 with the sale of the Products via the internet, which warning shall appear with such  
8 conspicuousness, as compared with other words, statements, designs, or devices in the label,  
9 labeling, or display as to render it likely to be read by an ordinary individual under customary  
10 conditions of purchase. The following warning statement shall be used adjacent to or immediately  
11 following the display, description, or price of the Product for which it is given in the same type size  
12 or larger than the Product description text:

13                   **WARNING:** This product contains di(2-ethylhexyl)phthalate (DEHP)  
14                                           a chemical known to the State of California to cause  
15                                           cancer and birth defects or other reproductive harm.  
16                                           (California Health & Safety Code § 25249.5, et seq.)

16                   Or,

17                   **WARNING:** This product contains di(2-ethylhexyl) phthalate (DEHP),  
18                                           a chemical known to the State of California to cause  
19                                           cancer and birth defects and other reproductive harm.  
20                                           (California Health & Safety Code § 25249.5, et seq.)

20                   **(ii) Internet Website Warning with Designated Symbol.** Where it is  
21 impracticable to provide the warning on the same page and in the same location as the display  
22 and/or description of the Product, Defendants may utilize the designated symbol “▼” or a warning  
23 phrase “CA Residents.” The designated symbol or warning phrase must appear on the same page  
24 and in close proximity to the display and/or description of the Product. On each page where the  
25 designated symbol or warning phrase appears, Defendants must provide a header, footer, or  
26 hyperlink directing the consumer to the definition of the designated symbol or warning phrase.  
27 Defendants shall use the following definitions for the designated symbol or warning phrase:  
28

1                   **WARNING:** Products identified with the term “CA Residents”  
2                   contain di(2-ethylhexyl)phthalate (DEHP), a chemical known  
3                   to the State of California to cause cancer and birth defects  
4                   or other reproductive harm. (California Health & Safety Code  
                      § 25249.5, et seq.)

5                   Or,

6                   **WARNING:** Products identified with this symbol ▼ contain di(2-  
7                   ethylhexyl)phthalate (DEHP), a chemical known to the  
8                   State of California to cause cancer and birth defects or  
9                   other reproductive harm. (California Health & Safety  
                      Code § 25249.5, et seq.)

10                  Or,

11                  **WARNING:** Products identified with the term “CA Residents” contain  
12                  di(2-ethylhexyl) phthalate (DEHP), a chemical known to the State of  
13                  California to cause cancer and birth defects and other reproductive  
                      harm. (California Health & Safety Code § 25249.5, et seq.)

14                  Or,

15                  **WARNING:** Products identified with this symbol ▼ contain di(2-  
16                  ethylhexyl)phthalate (DEHP), a chemical known to the  
17                  State of California to cause cancer and birth defects and  
                      other reproductive harm. (California Health & Safety  
                      Code § 25249.5, et seq.)

18                  **2.4 Compliance with Proposition 65**

19                  Compliance with the terms of this Consent Judgment by Defendants and the Released  
20                  Parties shall constitute compliance with Proposition 65 by Defendants and the Released Parties with  
21                  respect to any alleged failure to warn about DEHP in the Products manufactured, distributed, or  
22                  sold by Defendants after the date on which this Consent Judgment is entered.

23                  **3. MONETARY SETTLEMENT TERMS**

24                  **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

25                  Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
26                  claims referred to in this Consent Judgment, Defendants have been assessed civil penalties in the  
27                  amount of \$9,500 in accordance with this Section. The penalty payment will be allocated in  
28                  accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds

1 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by  
2 Wozniak. Wozniak’s counsel shall be responsible for remitting Defendants’ penalty payment(s)  
3 under this Consent Judgment to OEHHA.

4 **3.2 Civil Penalty**

5 Defendants shall make the civil penalty payment of \$9,500 in a single check made payable  
6 to “Paul Wozniak, Client Trust Account” to be delivered to the address and in the manner provided  
7 in Sections 3.3 and 3.4, below. Wozniak shall provide the appropriate 75% of the Civil Penalty to  
8 OEHHA directly.

9 **3.3 Reimbursement of Attorneys’ Fees and Costs**

10 The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute  
11 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
12 the issue to be resolved after the material terms of the agreement had been settled. Defendants  
13 expressed a desire to resolve all terms concurrently. The Parties negotiated a resolution of the  
14 compensation due to Wozniak and his counsel under general contract principles and the private  
15 attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work  
16 performed through the mutual execution of this agreement and the Court’s approval of the same,  
17 but exclusive of fees and costs on appeal, if any, Defendants shall reimburse Wozniak and his  
18 counsel \$41,500. Defendants’ payment shall be delivered to the address in Section 3.4 in the form  
19 of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and costs  
20 incurred by Wozniak investigating, bringing this matter to Defendants’ attention, litigating, and  
21 negotiating a settlement of the matter in the public interest.

22 **3.4 Payment Timing**

23 Defendants shall deliver all payments required by this Consent Judgment within thirty days  
24 (30) of the date that this Court enters Judgment, to Wozniak’s counsel at the address provided in  
25 Section 3.5.  
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1           **3.5    Payment Address**

2           All payments required by this Consent Judgment shall be delivered to the following  
3 address:

4                           The Chanler Group  
5                           Attn: Proposition 65 Controller  
6                           2560 Ninth Street  
7                           Parker Plaza, Suite 214  
8                           Berkeley, CA 94710

7           **4.    CLAIMS COVERED AND RELEASED**

8           **4.1    Wozniak’s Release of Proposition 65 Claims**

9           This Consent Judgment is a full, final, and binding resolution between Wozniak and  
10 Defendants and each of their past and present parents, affiliates, subsidiaries, divisions,  
11 predecessors, successors, and assigns, and each of their respective owners, officers, directors, board  
12 members, trustees, shareholders, managers, members, employees, agents, insurers, attorneys,  
13 auditors, accountants, experts, stockholders, representatives, partners, and any other persons acting  
14 on their behalf (“Released Parties”) concerning or in any way relating to the claims that have been  
15 or could have been asserted against Defendants and/or the Released Parties up through the date on  
16 which this Consent Judgment is entered, provided that such claims are based on or relate to the facts  
17 alleged in the operative Complaint filed by Plaintiff in this action.

18           Wozniak, acting on his own behalf and in the public interest pursuant to Health & Safety Code  
19 § 25249.7(d), releases, waives, and forever discharges any and all claims against Defendants and/or  
20 the Released Parties arising from any violation of Proposition 65 or any other statutory or common  
21 law claims that have been or could have been asserted in the public interest against Defendants and/or  
22 the Released Parties up through the date on which this Consent Judgment is entered, provided that  
23 such claims are based on or relate to the facts alleged in the operative Complaint filed by Plaintiff in  
24 this action.

25           **4.2    Wozniak’s Individual Release of Claims**

26           Wozniak, in his individual capacity only and *not* in his representative capacity, also  
27 provides a release to Defendants, and Released Parties, which shall be effective as a full and final  
28 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,



1 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature,  
2 character or kind, whether known or unknown, suspected or unsuspected, against Defendants and/or  
3 the Released Parties up through the date on which this Consent Judgment is entered, provided that  
4 such claims are based on or relate to the facts alleged in the operative Complaint filed by Plaintiff in  
5 this action.

6 **4.3 Defendants' Release of Wozniak**

7 Defendants, and Released Parties, on their own behalf and on behalf of their downstream  
8 retailers, downstream distributors, and downstream wholesalers, by this Consent Judgment, waive  
9 all rights to institute any form of legal action against Plaintiff, his past and current agents,  
10 representatives, attorneys, experts, successors and assignees, for actions or statements made or  
11 undertaken, in connection with investigating claims or seeking enforcement of Proposition 65  
12 against Defendants in this matter.

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and  
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
16 after it has been fully executed by all Parties. Wozniak and Defendants agree to support the entry  
17 of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely  
18 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section  
19 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which  
20 motion Wozniak shall draft and file and Defendants shall support, appearing at the hearing if so  
21 requested. If any third-party objection to the motion is filed, Wozniak and Defendants agree to  
22 work together to file a reply and appear at any hearing. Wozniak and Defendants agree that  
23 Wozniak shall request a motion to approve hearing no earlier than 60 days after the mutual  
24 execution of this Consent Judgment. This provision is a material component of the Consent  
25 Judgment and shall be treated as such in the event of a breach.

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1 **6. SEVERABILITY**

2 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment,  
3 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the  
4 remaining provisions shall not be adversely affected.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California.  
7 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by  
8 reason of law generally, or as to the Products, then Defendants may provide Wozniak with written  
9 notice of any asserted change in the law, and shall have no further obligations pursuant to this  
10 Consent Judgment, with respect to, and to the extent that, the Products are so affected. Nothing in  
11 this Consent Judgment shall be interpreted to relieve Defendants from their obligations to comply  
12 with any pertinent state or federal law or regulation.

13 **8. NOTICE**

14 Unless specified herein, all correspondence and notice required by this Consent Judgment  
15 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
16 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the  
17 following addresses:

18 To Defendants:  
19 Tammy Stafford  
20 Senior Counsel, Litigation and Risk  
21 Harbor Freight Tools  
22 26541 Agoura Road  
23 Calabasas, CA 91302  
24 Email: [TStafford@harborfreight.com](mailto:TStafford@harborfreight.com)

To Wozniak:  
Attn: Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

24 Peter Hsiao  
25 Navi Dhillon  
26 Morrison & Foerster  
27 425 Market Street  
28 San Francisco, CA 94105  
Email: NDhillon@mofocom

1 Any Party may, from time to time, specify in writing to the other Party a change of address to  
2 which all notices and other communications shall be sent.

3 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile or portable  
5 document format (pdf) signature, each of which shall be deemed an original and, all of which, when  
6 taken together, shall constitute one and the same document.

7 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

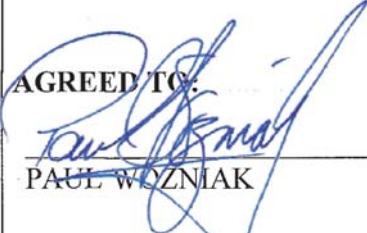
8 Wozniak and his counsel agree to comply with the reporting form requirements referenced  
9 in California Health and Safety Code section 25249.7(f).

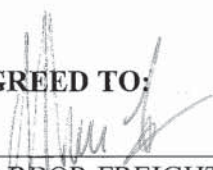
10 **11. MODIFICATION**

11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
12 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
13 any party and the entry of a modified Consent Judgment by the Court thereon.

14 **12. AUTHORIZATION**

15 The undersigned are authorized to execute this Consent Judgment on behalf of their  
16 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
17 Consent Judgment.

18  
19 **AGREED TO:**   
20 \_\_\_\_\_  
21 PAUL WOZNIAK  
22 Dated: 4/26/2016

23 **AGREED TO:**   
24 \_\_\_\_\_  
25 HARBOR FREIGHT TOOLS USA, INC.  
26 AND CENTRAL PURCHASING, LLC  
27 By: **MARC FRIEDMAN**  
28 (Print Name)  
SECRETARY  
Its: \_\_\_\_\_  
(Title)  
Dated: \_\_\_\_\_